

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS ANDREW STRONG,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2010

No. 290588

Wayne Circuit Court

LC No. 06-009249

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Defendant appeals by right that portion of the judgment of sentence on resentencing requiring that he reimburse the county \$2,090 in court-appointed counsel fees.<sup>1</sup> We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred when it determined that defendant had the present or future ability to repay \$2,090 in court-appointed attorney fees. Defendant relies on *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), which held that before requiring reimbursement of a fee for a court-appointed attorney, a trial court must state on the record its presentence determination that the defendant has a foreseeable ability to pay the fee. However, in *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009), our Supreme Court overruled *Dunbar*. The *Jackson* Court held that such an ability-to-pay assessment is only constitutionally necessary when the order is actually enforced and a defendant contested his ability to pay. *Id.* at 275, 290-292. Then, when a trial court attempts to enforce its earlier reimbursement order under MCL 769.1k, the defendant must be advised of this enforcement action and be given an opportunity to contest the enforcement on the basis of his then-existing indigency. The trial court must then evaluate “whether a defendant is indigent and unable to pay *at that time* or whether forced payment would work a manifest hardship on the defendant *at that time*.” *Id.* at 293 (emphasis in original).

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<sup>1</sup> Defendant was resentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of 129 months to 30 years for his jury convictions of manslaughter, MCL 750.321, and witness intimidation, MCL 750.122(7)(c).

Here, because defendant does not contest the amount of the reimbursement ordered, his challenge to the order is premature. To the extent defendant's claim of error rests on a general claim of indigency at the time of sentencing, the trial court did not err. The trial court arguably jumped the gun when it determined that defendant would have the ability to repay the attorney fees once he is released from incarceration. However, defendant has not shown that he is entitled to relief at this time. Defendant may object to the enforcement of any post-trial order to enforce the reimbursement order.

To the extent that defendant's argument could be read as a challenge to the trial court's failure to order suspension of its reimbursement order during defendant's incarceration, we note that the *Jackson* Court also held that, "remittance orders of prisoner funds, under MCL 769.11, generally obviate the need for an ability-to-pay assessment with relation to defendants sentenced to a term of imprisonment because the statute is structured to only take monies from prisoners who are presumed to be nonindigent." *Id.* at 275.

MCL 769.11 inherently calculates a prisoner's general ability to pay and, in effect, creates a statutory presumption of nonindigency. The provision only allows the garnishment of a prisoner's account if the balance exceeds \$50. Although this amount would be insufficient to sustain a defendant living among the general populace, it is uncontested that a prisoner's "living expenses" are nil, as the prisoner is clothed, sheltered, fed, and has all his medical needs provided by the state. The funds left to the prisoner on a monthly basis are more than adequate to cover the prisoner's other minimal expenses and obligations without causing manifest hardship. Thus, we conclude that § 11's application makes a legitimate presumption that the prisoner is not indigent. [*Jackson*, 483 Mich at 295].

Defendant has not asserted that his living expenses are not being provided for by the state during his incarceration. Moreover, as discussed under *Jackson*, a prisoner who believes that he suffers "unique and extraordinary financial circumstances" and does not have the ability to pay fees while incarcerated may petition the trial court for separate relief, pursuant to the procedure contained in MCL 771.3(6)(b). See *Jackson*, 483 Mich at 296-297. Defendant may choose to avail himself of this procedure.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Mark J. Cavanagh  
/s/ Alton T. Davis